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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN ASHMORE,

Plaintiff,

11-CIV-8611 (AT)

v.

CGI GROUP INC. and CGI FEDERAL INC.,

Defendants.

**DECLARATION OF
ROBERT L. HERBST
IN OPPOSITION TO
SUMMARY JUDGMENT**

ROBERT L. HERBST, an attorney duly admitted to practice before this Court, and the principal of Herbst Law PLLC, attorney for plaintiff herein, declares under penalty of perjury that the following is true and correct pursuant to 28 U.S.C. §1746:

1. Attached as Exhibit 1 is the transcript of the June 13, 2013 deposition of Tony Gorris.

A word index is unavailable; a text-searchable courtesy copy is separately submitted.

2. Attached as Exhibit 2 is the transcript of the June 25, 2013 deposition of Tracey Rudy.

A word index is unavailable; a text-searchable courtesy copy is separately submitted.

3. Attached as Exhibit 3 is the transcript of the July 24, 2013 deposition of Michael Ashbrook. A word index is unavailable; a text-searchable courtesy copy is separately submitted.

4. Attached as Exhibit 4 is the transcript of the July 24, 2013 deposition of Dennis Ryan.

A word index is unavailable; a text-searchable courtesy copy is separately submitted.

5. Attached as Exhibit 5 is the transcript of the July 25, 2013 deposition of Leslie Pierce.

A word index is unavailable; a text-searchable courtesy copy is separately submitted.

6. Attached as Exhibit 6 is the transcript of the July 25, 2013 deposition of Shawn Steen.

A word index is unavailable; a text-searchable courtesy copy is separately submitted.

7. Attached as Exhibit 7 is the transcript of the August 28, 2014 Fed. R. Civ. P. 30(B)(6) deposition of Kelly Bryson. A text searchable courtesy copy is separately submitted.

8. Omitted.

9. Attached as Exhibit 9 is the March 25, 2014 opinion reported at *CMS et al v United States*, 745 F.3d 1379 (Fed. Cir. 2014).

10. Attached as Exhibit 10 are pertinent pages of the January 2015 brief of the United States Solicitor General in *United States v. CMS et al*, S. Ct. Dkt. No. 14-781.

11. Attached as Exhibit 11 is the HUD Office of the Inspector General Audit Report Number 2010-LA-0001 dated November 12, 2009, that is available online at

<http://www.hud.gov/offices/oig/reports/files/ig1090001.pdf>.

12. Attached as Exhibit 12 are pertinent pages of *P. Ex. 16 (D. Bates 5033)*, CGI's June 25, 2010 Summary Pricing Matrix.

13. Attached as Exhibit 13 are pertinent pages of CGI's March 29, 2011 "Executive Step Review Project: HUD Performance Based Contract Administration (PBCA) Recompete" together with accompanying executive approvals (*D. Bates 20100029, 31, 34, 39-40, 43-45, 47, 2009889-95*).

14. Attached as Exhibit 14 is *P. Ex. 27 (D. Bates 9072)*, CGI executive emails dated January 14-15, 2010, concerning HUD's announcement of proposed bid restrictions.

15. Attached as Exhibit 15 are pertinent pages of CGI's December 1, 2009 Memorandum of Understanding (*D. Bates 2005467*) and pertinent pages of *P. Ex. 25* (*D. Bates 10896*), CGI's June 28, 2010 Memorandum of Understanding.

16. Attached as Exhibit 16 are pertinent pages of CGI's New York PHA partner's December 5-9, 2005 emails with certain HUD officials, and CGI's December 2, 2005 NY PBCA Communication Matrix (*D. Bates 10391*).

17. Attached as Exhibit 17 are CGI's documents and emails dated December 4, 2005 through April 21, 2009 (*D. Bates 1632, 10920, 10182, 10180, 10184*) concerning CGI's and Carragher's recruitment of Ashmore.

18. Attached as Exhibit 18 is CGI's HUD April 21, 2009 approval request to hire Ashmore, with accompanying attachments (*D. Bates 10171*).

19. Attached as Exhibit 19 is *D. Ex. BB* (*D. Bates 3015*), Kyprianou and Ashmore April 8, 2010 emails.

20. Attached as Exhibit 20 are Carragher's HR time sheet approval request emails for Ashmore dated June 1, 2010 (*D. Bates 8334*) and June 14, 2010 (*D. Bates 8373*).

21. Attached as Exhibit 21 is *P. Ex. 3* (*D. Bates 2697*), Ashmore's complete April 15, 2010 Annual Performance Review.¹

22. Attached as Exhibit 22 are CGI's August 11-24, 2009 "Emerging Talent Initiative" emails (*D. Bates 9512*).

23. Attached as Exhibit 23 are pertinent emails concerning CGI's bid to HUD for the Housing Choice Voucher Program Administrative Fee Study (*D. Bates 2009860, 10552, 7980, 7994, 8002, 8003, 3131, 3128, 3140*).

¹ The document produced and marked as *P. Ex. 3* was an emailed copy of Ashmore's review. CGI later produced the signed copy on July 2, 2014. The signature page is included here.

24. Attached as Exhibit 24 are pertinent pages of CGI's August 14, 2009 Proposal to the Oakland Housing Authority for Administration of the Section 8 Housing Choice Voucher Program (HCVP), *P. Ex. 6, (D. Bates 0654)*, together with Exhibit A to CGI's contract with the Oakland Housing Authority, *P. Ex. 7.*²

25. Attached as Exhibit 25 are pertinent emails concerning CGI's Oakland Housing Authority HCVP Administration Project, dated January 4, 2010 through June 8, 2010 (*D. Bates 679, 725, 703, 699, 692, 745, 744, P. Bates 1*).

26. Attached as Exhibit 26 are pertinent emails concerning CGI's bid to GSA for the HUD Transformation Initiative and Ashmore's communications with colleagues (*D. Bates 7664, 7976, 8442, 158, 10623, 8098, 8111, 2717, 2784, 2008631-34, 2008641, 2008643-46, P. Bates 12, 34, D.Bates 8317, P. Bates 35, 36, 38, D. Bates 5261, 5220, 5257, 5098, 3066, P. Bates 89, 7, D. Bates 5096, 8371, P. Bates 31, 32, 2823*).

27. Attached as Exhibit 27 are pertinent emails concerning Ashmore and Rudy's interactions (*D. Bates 2008661-62, 2009381, 2008824-25, 7662, 2008878, 2009279-82*).

28. Attached as Exhibit 28 are pertinent emails concerning Ashmore's communication about his work schedule and activities (*D. Bates 7518, 2568, 3262, 7591, 7232, 129, 3020, 3025, 277, 3039, 314, 311, 2830, P. Bates 5, D. Bates 2009395*).

29. Attached as Exhibit 29 are *D. Bates 2005757-62*, Ashmore's billed hours, September 20, 2009 through June 16, 2010.

30. Attached as Exhibit 30 are Ashmore and Kyprianou's emails (*P. Bates 19, 24, D. Bates 5262, P. Bates 25, D. Bates 5161 P. Bates 3*) during the hospitalization of Stacey Schrager and

² CGI did not produce *P. Ex. 7* in discovery, but instead annexed it as an exhibit to their Answer during the parties' initial O.S.H.A. proceeding, thus this is why there is no corresponding bates number.

concerning the HUD Transformation Initiative proposal submitted with CGI partner ICF International.

31. Attached as Exhibit 31 are Ashmore's emails to or with Kyprianou between May 2-17, 2010 evidencing daily contact with Kyprianou and Ashmore's work concerning the HUD TI proposal and confirming that although Kyprianou was involved with this proposal, he had no supervisory or approval authority over the HUD TI proposal. *See also ante, at ¶26.*

32. Attached as Exhibit 32 is *P. Ex. 4 (D. Bates 393)*, Ashmore's reply to Kyprianou's May 18, 2010 email.

33. Attached as Exhibit 33 is *D. Ex. DD (D. Bates 5004)*, Ashmore May 5, 2010 email to Curry bearing Carragher's handwritten June 17, 2014 notes with attached further notes.

34. Attached as Exhibit 34 is the May 14, 2010 HUD letter (*D. Bates 2006717*) to Dennis Guest.

35. Attached as Exhibit 35 are pertinent pages of *P. Ex. 28 (D. Bates 8719)*, CGI's forward of HUD's June 8, 2010 email providing an agenda for HUD June 9, 2010 conference call, and including May 14, 2010 HUD unit cap changes.

36. Attached as Exhibit 36 are pertinent pages of *P. Ex. 19 (D. Bates 5041)*, Durivage's summary of HUD's June 9, 2010 conference, reflecting *inter alia*, "thus the May [14] 2010 comparison matrix includes the final changes to the ACC."

37. Attached as Exhibit 37 are June 8, 2010 emails (*D. Bates 8729*) circulated among all members of the Rat Pack, except Ashmore, discussing whether to ask HUD about a 49/51% subcontractor definition.

38. Attached as Exhibit 38 are Carragher's June 11, 2010 meeting cancellation email (*D. Bates 2765*) and Carragher's June 14, 2010, 3:43 p.m. email, *P. Ex. 35* (*D. Bates 8377*) removing Ashmore from all Rat Pack calls and emails, and changing call-in details.

39. Attached as Exhibit 39 is Kyprianou's June 14, 2010, 4:37 p.m. email (*D. Bates 8379*) removing Ashmore from the Rat Pack, including Ashmore's reply.

40. Attached as Exhibit 40 is Duffy's June 15, 2010 Rat Pack email (*D. Bates 5039*) reflecting that the June 15, 2010 Rat Pack call, which Ashmore was told was cancelled, was actually rescheduled and held.

41. Attached as Exhibit 41 is *P. Ex. 5* (*D. Bates 8381*), Kyprianou's June 14, 2010 11:35 p.m. email to CGI Human Resources.

42. Attached as Exhibit 42 is *P. Ex. 12* (*D. Bates 5003*), "Confidential HR Notes" of the June 16, 2010 termination of Ashmore.

43. Attached as Exhibit 43 are CGI emails (*D. Bates 9378*) reflecting attached documents concerning Carragher and Schmitz's October 12, 2009 termination of Tara Scott.

44. Attached as Exhibit 44 is *P. Ex. 30* (*D. Bates 5480*), Clause February 2, 2010 email to Duffy attaching February 3, 2010 "PBCA Update GR Priorities" presentation.

45. Attached as Exhibit 45 is Schmitz' February 26, 2010 email to Carragher and others (*D. Bates 9229*) concerning "alternative models and plans in case HUD keeps the cap in place."

46. Attached as Exhibit 46 is *P. Ex. 31* (*D. Bates 5229*), CGI April 8, 2010 PBCA opportunity update to CGI US President Donna Morea.

47. Attached as Exhibit 47 is *P. Ex. 32* (*D. Bates 8997*), April 8-9, 2010 Carragher emails about the April 8, 2010 presentation to Morea.

48. Attached as Exhibit 48 are the questions CGI submitted to HUD on February 25, 2010 (*D. Bates 2006507-09*), resubmitted on June 3, 2010 (*D. Bates 2006850-51*), July 9, 2010 (*D. Bates 2006481-90*) and after HUD released its formal February 28, 2011 Invitation for Bids (*D. Bates 2006504-06*).

49. Attached as Exhibit 49 is the pertinent page of P. Ex. 29 (*D. Bates 5044*), Carragher April 16, 2010 email about HUD rumor and unit caps.

50. Attached as Exhibit 50 are pertinent pages of *P. Ex. 14* (*D. Bates 5043*), CGI May 17, 2010 Senior Management Committee email and presentation slides.

51. Attached as Exhibit 51 are emails concerning Ashmore's participation in the December 2009 – March 2010 Senior Management Committee (*D. Bates 4168, 4177, 4294*).

52. Attached as Exhibit 52 are Gorris emails with Denver Housing Authority dated July 1, 2010 (*D. Bates 10469*) and August 3, 2010 (*D. Bates 10473*).

53. Attached as Exhibit 53 are pertinent pages of *P. Ex. 15* (*D. Bates 5603*), CGI's July 12, 2010 Executive Step Review to submit pricing to PHA partners.

54. Attached as Exhibit 54 are CGI's staffing matrices dated as follows: June 16, 2010 (*D. Bates 2010719-20*), September 15, 2010 (*D. Bates 2010839-40*), September 16, 2010 (*D. Bates 20100849-52*), January, 2011 (*D. Bates 2010829-30*), February, 2011 (*D. Bates 2010829-30*), March 11, 2011 (*D. Bates 2010824-25*), March 14, 2011 (*D. Bates 2010821-23*), and April 12, 2011 (*D. Bates 2010834-35*).

55. Attached as Exhibit 55 are CGI's and their Partner's Bid Certifications to HUD in April of 2011 (*D. Bates 2011047-129*).

56. Attached as Exhibit 56 are CGI's Space Needs requirements spreadsheets (*D. Bates 2010807-08*).

57. Attached as Exhibit 57 are pertinent pages of HUD's March 24, 2011 answers to questions concerning bid submission requirements of the PBCA re-compete (*D. Bates 2006561, 2006563, 2006674*).

58. Attached as Exhibit 58 is the final Summary Pricing Matrix (v. 7.0) that CGI produced, (*D. Bates 2010998-99*), and the December 17, 2010 CGI Portfolio (*D. Bates 2010916-17*).

59. Omitted.

60. Attached as Exhibit 60 is CGI's November 5, 2009 Media Announcement: CGI Renews US\$58.1 Million in Contracts to Serve U.S. Dept. of Housing and Urban Development.

61. Attached as Exhibit 61 is page 34 of the Consolidated Financial Statements of CGI Group, Inc. for the years ended September 30, 2010 and 2009.

62. Attached as Exhibit 62 is the cited article McLean, Bethany. "Accounting for Obamacare: Inside the Company That Built Healthcare.gov", Vanity Fair, December 23, 2013.

63. Attached as Exhibit 63 are Ashmore's emails to Carragher and the Rat Pack after HUD initially announced the proposed unit cap: January 18, 2010 (*D. Bates 2009651-52*), January 29, 2010 (*D. Bates 7814*), and February 16, 2010 (*D. Bates 7912*).

64. Attached as Exhibit 64 are Carragher and Kyprianou's emails discussing the removal Ashmore from Carragher's division dated April 30, 2010 (*D. Bates 5131*) and May 4, 2010 (*D. Bates 5135*).

65. Attached as Exhibit 65 are CGI's internal documents reflecting Ashmore's budgeted compensation: February 25, 2010, *P. Ex. 17* (*D. Bates 8669*), May 13, 2010 (*D. Bates 8224*) and May 28, 2010, *P. Ex. 18* (*P. Bates 41*).

66. Attached as Exhibit 66 are CGI's documents concerning Ashmore's earning and CGI compensation practices and guidelines: October 8, 2009 (*D. Bates 7355-56*), November 6, 2009

(D. Bates 2007362-63), FY 2009 BPS Salary & Incentive Compensation redacted spreadsheet
(D. Bates 2008463-65), FY 2010 BPS Salary & Incentive Compensation redacted spreadsheet
(D. Bates 2008466-69).

Dated: New York, New York
March 12, 2015

By: /s/ Robert L. Herbst